

U.S. Department of Labor

Office of Administrative Law Judges
603 Pilot House Drive, Suite 300
Newport News, Virginia 23606-1904

TEL (757) 873-3099
FAX (757) 873-3634



Date: October 5, 2000

Case No.: 2000-WPC-0006

In the Matter of:

J. LARRY BREWER,
Complainant,

v.

ATLANTIC COAST MECHANICAL,
Respondent.

**RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AGREEMENT**

This proceeding involves employee protection provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Safe Drinking Water Act (42 U.S.C. 300j-9; and implementing regulations at 29 C.F.R., Part 24.

By letter dated September 18, 2000, counsel for both parties presented a signed settlement agreement and moved that the matter be dismissed with prejudice.

My review of the settlement agreement is limited to a determination of whether its terms are fair, adequate and reasonable. Fuchkco and Yunker v. Georgia Power Co., 89-ERA-9 and 10 (Sec'y, March 23, 1984). The settlement must adequately protect the whistleblower. Virginia Electric Power and Power Co., 19 FERCS 61 (Federal/Energy/Regulatory Commission, 1982). Furthermore, the settlement must not be contrary to public interest. Heffley v. NCK Metals Corp., 89 SDW 2 (Sec'y, March 6, 1990).

First, I note that the parties are represented by counsel. In reaching an agreement, Respondent does not admit that it has broken any law or regulation. Nor is the agreement to be construed as an admission of liability or wrong doing by Respondent. Moreover, Complainant waives his right to sue in the future on claims or causes of action arising out of facts occurring prior to the date of the execution of this

agreement. Furthermore, Respondent agrees to pay Complainant the sum of \$4,000.00 upon approval of the settlement.

After consideration of the settlement agreement, I find that none of the terms or conditions are unacceptable. Moreover, I find the agreement to be fair, adequate, and reasonable, and I believe it is in the public interest to adopt the agreement as a basis for the administrative disposition of this case. Therefore, I recommend dismissal of this proceeding with prejudice.

DANIEL A. SARNO, JR.
Administrative Law Judge

DAS/dlh

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. § 24.8, a petition for review is timely filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. Such a petition for review must be received by the Administrative Review Board within ten (10) business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See C.F.R. §§ 24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).

SETTLEMENT AGREEMENT AND RELEASE IN FULL OF ALL CLAIMS

Whereas, J. LARRY BREWER ("Plaintiff") and ATLANTIC COAST MECHANICAL, INC. ("ACM or Defendant") have reached a mutually agreed upon settlement with respect to the claims of Plaintiff against ACM, the parties hereby enter the following Settlement Agreement and Release in Full of all Claims, as follows:

1. It is understood by the parties that the Defendant denies any liability to the Plaintiff with respect to all claims he has alleged against the Defendant. However, in exchange for the following mutual consideration, both Plaintiff and Defendant have agreed to compromise and settle the Plaintiff's claims:

A. Defendant shall pay to the Plaintiff and Plaintiff's counsel the sum of FOUR THOUSAND DOLLARS AND NO/100 (\$4,000.00) which shall represent payment with respect to all claims and causes of action (whether asserted by the Plaintiff or not) possessed by the Plaintiff against the Defendant through the date of the execution of this Agreement, all attorney's fees incurred by the plaintiff, and any costs incurred by the Plaintiff in pursuing his claims.

2. In consideration of the foregoing, the receipt of which is hereby acknowledged, **J. LARRY BREWER** hereby releases, remises, and forever discharges ATLANTIC COAST MECHANICAL, INC., together with all of ACM's related entities (including all parent companies and subsidiaries), as well as all agents, servants, independent contractors, officers, or employees, and any predecessors, successors, legal representatives or assigns of the above listed entities or individuals. Said release, remise and discharge shall be of and from every claim, demand, right or cause of action, of whatever kind or nature, arising from or growing out of **J. LARRY BREWER'S** employment by ACM or the termination of that employment, through and including the date of the execution of this Agreement. The claims released herein include, but are not limited to, those which were or could have been set forth in United States

Department of Labor Occupational Safety and Health Administration Case Number 1182633. Plaintiff agrees to take immediate action to secure dismissal with prejudice with respect to that case.

Plaintiff understands that the Settlement Agreement and Release is intended to cover and include any and all past, present, and future damages (including; but not limited to, back pay, lost wages, compensatory damages, punitive damages, costs and attorney's fees) arising from the aforementioned claims, including any damages which are not now known to either party, but which may later develop or be discovered, including all causes of action therefore.

3. In consideration of the items set forth **previously, J. LARRY BREWER** agrees to indemnify and hold harmless the parties released hereby, of and from any and all demands, claims, actions or causes of action, of any kind or nature, arising out of his aforesaid employment, which may now exist or which may arise in the future and which may ever be asserted against the parties released hereby.

4. Plaintiff agrees that subsequent to the execution of this Agreement, Plaintiff will never apply for any position of employment (full time, part-time, or temporary) with ACM, nor with any of ACM's parent companies, subsidiaries, predecessors, successors, or other related entities.

5. This Release and Settlement Agreement constitutes the entire Agreement between the parties.

6. It is understood and agreed that the consideration received by Plaintiff is a full, complete and entire consideration for the Release and Settlement Agreement and by endorsing the draft issued by ACM, Plaintiff understands and agrees that there is no agreement, oral or written, express or implied, whereby

the Plaintiff is entitled to receive at anytime or in any event or upon the happening of any contingency, any future consideration of any kind whatsoever from the parties released hereby.

7. Plaintiff further agrees and understands that Plaintiff will not hereafter file or institute any administrative proceeding or court action against any of the parties released hereby. Further, should any suit or action nevertheless be brought, this Release and Settlement Agreement shall be a complete and conclusive defense to any such action.

8. The parties to this Agreement specifically agree that the interpretation of this Agreement shall be governed by the laws of the State of Georgia.

9. The plaintiff warrants that no other person or entity has any interest in the claims referred to in this Settlement Agreement and that Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

10. It is specifically agreed by the parties to this Agreement and counsel who have represented the parties to this Agreement that neither party will discuss the fact or terms of this Settlement with any person, and the Settlement shall be and remain confidential, unless disclosure is ordered by a court of

competent jurisdiction after the parties to this Agreement have had the opportunity to object to such disclosure.

11. By entering into this Settlement Agreement, the undersigned represents that they have completely read the terms of the Agreement and that it has been completely read and explained to them by their counsel and that the terms are fully understood and voluntarily accepted.

12. The effective date of this Settlement Agreement and Release shall be deemed to be the date that it is execute by the Plaintiff.

This 29th day of August , 2000.

/s/
J. LARRY BREWER (Plaintiff)

/s/
JEFFREY A. FELSER (Counsel for Plaintiff)
Georgia Bar No. 257833
Felser Law Firm, P.C.

ATLANTIC COAST MECHANICAL, INC.

By: /s/
Its Executive Vice President
ROY E. KING